Supreme Court, U.S.
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No. 07-349

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL J. O'CALLAGHAN, *Pro Se*,

Petitioner,

v.

HON. PETER C. HARVEY, in past or present official capacity as Attorney General of the State of New Jersey; HON. ARIEL A. RODRIGUEZ, in his past or present official capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; HON. DAVID B. RAND, in individual and past or present official capacity as Justice of the superior Court of New Jersey, Chancery Division, Family Part; EINHORN, HARRIS, ASHCER, BARBARITO, FROST & IRONSON, P.C.; and SHARON RYAN MONTGOMERY,

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITON FOR A WRIT OF CERTIORARI

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Questions Presented for Review

1. Is not the *Rooker-Feldman* bar repeatedly advanced invalid as there has not occurred any "*final decision*" nor any decision on the merits at any time?

2. Is not the *Rooker-Feldman* bar repeatedly advanced invalid as "*dismissal as a sanction*" determined by Circuit precedent as not such bar, nonetheless such precedent repeatedly omitted by the District and Circuit Courts?

3. Upon a conceded absence of jurisdiction, is not *judicial* immunity invalid concerning a continuing *declaratory* civil rights and/ or *declaratory* tort claim?

4. Does not immunity fail for a person who claims this special treatment but who fails in all performance?

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In The

Supreme Court of the United States

DANIEL J. O'CALLAGHAN, *Pro Se,*
Petitioner,

v.

HON. PETER C. HARVEY, in past or present official capacity as Attorney General of the State of New Jersey, *et al.*

PETITION FOR WRIT OF CERTIORARI

OPINIONS AND ORDERS BELOW

The opinions of the United States District Court for the District of New Jersey are not officially reported and are dated March 10, 2005, August 30, 2005, and March 22, 2006, and appear in Appendix ("**App**") at A1, A15, and A16.

The opinion and judgment of the Court of Appeals for the Third Circuit which affirmed are not officially reported, are dated May 17, 2007, and appear in App at A18 and A21. The decision upon sur petition for rehearing of the Court of Appeals for the Third Circuit which denied the petition for rehearing en banc is not officially reported, is dated June 19, 2007, and appears at App at A22.

JURISDICTION

Subject matter jurisdiction in the district court was grounded upon 28 U.S.C. §§ 1331 and 1332. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

STATUTORY AND RULE PROVISIONS

These provisions are involved: 42 U.S.C. § 1983 and 1985 (3) and Federal Rules of Civil Procedure ("FRCP") Rules 8 and 12 (b) and New Jersey Family Court Rules.

STATEMENT OF THE CASE

This case arises out of a N.J. family court case conducted since June, 2000. Subsequent to years of injurious delay and a wrongful severance/ termination of father-child relationship, argument before the New Jersey Appellate Division (the "**AD**") was held on October 2, 2002. The judges present expressed shock that any "overnight" association, even one (1) day, ever had occurred during the nearly 3-year proceedings as had been authorized by Judge Rand in limited fashion in March, 2002. In *Opinion I*, dated October 29, 2002, the AD remanded the matter to Judge Rand for analysis/ consideration of any "overnights" – eradicated since August, 2000. *Opinion I* concealed the misconduct and maladministration of the family court case as administered by Judge Harper and avoided mention/ consequence of the *Family Therapist Privilege*. R. Evid. 510.

Subsequent to a December, 2002, filing of 02-cv-5791, Judge Rand issued an "*order to show cause*" for sanctions against this Petitioner-father grounded upon commencement of such Federal action.[1] As stated in the Complaint, ¶ 160, at a proceeding held January 15, 2003, Judge Rand – upon conceded absence of jurisdiction – denied the father any statement. Instead, as stated in the Complaint, ¶¶ 162, *et seq.*, *word for word*, Judge Rand encouraged the mother's counsel, Einhorn, to participate in the "sanctions" and defamation

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[1] *Inter alia*, 02-cv-5791 sought a declaration that the family court's use of Montgomery as a "*parenting coordinator*" – as absent legislative authority – was improper. Montgomery was the therapist in *Kinsella* and an Einhorn-imposed favorite. *See Kinsella v. Kinsella*, 150 N.J. 276 (1997).

proceeding and made these statements before a large audience:

- *When I heard that you had sued Montgomery, I was going to direct that you dismiss that case in 15 minutes – or go to jail;*
- *Next, I considered writing to the New York legal professional associations in order to attack your character and integrity; I relieve Montgomery;*
- *You are ... [false accusation of a "loathsome disease"];*
- *All association with the child DTB is suspended, temporary sole physical and legal custody to the defendant[-mother] to/ until plaintiff-[Petitioner]-father discredits [State-appointed psychologist's] Dr. Monday's evaluation [which recommended enhanced father-son relationship/ child's immediate therapeutic counseling] and discredits under oath in family court the merits of the pending Federal civil rights cases;*
- *Provides monetary reward to Einhorn and praises Montgomery, a local "regular".*

Respectfully, this case has been marked for six (6) years by the presence of well-documented judicial misconduct and maladministration in order to position a wrongful severance/ termination of father-child relationship.

REASONS FOR GRANTING THE WRIT

A. No *Rooker--Feldman* Bar: Separate But Not Equal.

The district court and Circuit court have relied upon *Rooker-Feldman* to bar all relief. However *Exxon Mobil Corporation v. Saudi Basic Industries Corp.*, 544 U.S 280 (2005), identified an always limited application. Respectfully, this limited application is/ remains exactly in the same manner and to the same effect as Petitioner has presented for many

years. Inhumane conduct should not be overlooked because some Respondents are judicial officials. A *double standard* should not apply in a Federal action where jurisdiction plainly exists. Here, a *Rooker-Feldman* bar does not exist – and has not ever existed.

Reliance upon such bar presupposes a final order/ judgment *on the merits*. Here, there never occurred any "*final*" judgment, order, decree or like adjudication "*on the merits*" at any time or in any proceeding in any State court. Saying such happened does not make it true. *See ITT Corporation v. Intelnet International Corporation*, 366 F. 3rd 205 (3rd Cir. 2004), dated April 26, 2004, *i.e.*, earlier precedent that dismissal as a "*sanction*" is not a *Rooker-Feldman* jurisdictional bar. *See also, Whiteford v. Reed*, 155 F. 3rd 671, 674 (3rd Cir. 1998) (no bar to claim that had been rejected on procedural grounds).

The district court's and Circuit's failure to address the subject of inhumane State judicial misconduct against a father litigant and minor child for years upon an entirely absent *Rooker-Feldman* excuse stands our Constitution on its head.

Here, *ITT Corporation* prevented *Rooker-Feldman* application to this case. In multiple footnotes upon analysis and citation to R. 4:37-2(a) in an opinion filed April 26, 2004, the Circuit in *ITT Corporation* conclusively determined an absence of *Rooker-Feldman* bar to a *dismissal not on the merits, i.e., as a sanction*. Thus, what the NJ courts have accomplished was several years of inhumane 10-6 interstate association concerning a then 8-10-year old child with knowledge that NJ's own rules/ legal precedents precluded any *Rooker-Feldman* defense – nonetheless, one made to the district court and to the Circuit and to this Court for years.

This occurred because through use of the State's own records/ recordings the Petitioner-father had exposed NJ judges to have positioned a child of unmarried parents into a fatherless life. In consequence, the State judiciary unfairly treated the case adversely against the father – and child. This occurred and continues notwithstanding documented as contrary to the facts and the law. Respectfully, *Exxon Mobil* and *ITT Corporation* provide Federal jurisdiction for Petitioner's claims. These claims should proceed as in any other non-*Rooker-Feldman*-barred case. If not, then an unidentified double standard exists and the doctrine's "*resting place*" remains premature for some of our citizens and their children. *See Marshall v. Marshall*, 04-1544, -- U.S. – (5/1/06).[2]

Since the previously always-involved father's mid-June, 2000, commencement of family court action for preservation of parent-child relationship, relentlessly for more than 6 years, the State judiciary together with local "friends" have acted in violation of our Constitution. This has occurred so as to conceal the misconduct and maladministration at the core of family court proceedings, AD avoidance, and the *Advisory Committee on Judicial Conduct* ("ACJC") disinterest. Sadly, since mid-2000, the State has accomplished irrevocable injury to the minor child's psyche and well-being, indeed, has destroyed in a fundamental manner the child's entire childhood. This has been accomplished and continues upon false excuses and irresponsible rulings – anything but reveal the misconduct and maladministration at the center of the family court "process". For such a child – and father – the State system literally does <u>not</u> operate.

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[2] In a *Marshall* concurrence, -- U.S. --, Justice Stevens stated:

> *Rather than preserving whatever vitality that the [other] "exception" has retained ..... I would provide the creature with a decent burial in a grave adjacent to the resting place of the Rooker-Feldman doctrine.*

B. No Immunity: No Proper Rule 8 Dismissal

During the lengthy period, *August, 2000 – April, 2002*, the mother failed on at least 28 Saturdays/ Sundays to provide even the 6-8 hour no-overnight (twice) per month inter-state "association" family court authorized. From the *September 11, 2001*, attack on our nation at the *World Trade Center* through April, 2002, there occurred an absence of all "association": Judge Harper had authorized solely (dangerous) "exchanges" at the father's office located ½ block from the disaster site, or at Penn Station (NYC).

As itemized in the Complaint, ¶¶ 107, *et seq.*, upon the attack, the mother refused any "association" except "exchanges" at these 2 locations. Notwithstanding early October, 2001, "appeal", nearly 60 days later, *i.e.*, on 11/29/2001 (earlier, Judge Rand on 11/7/2001), the AD's Hon. Ariel A. Rodriguez ("Judge Rodriguez") summarily validated these bizarre and dangerous "exchanges". In consequence, no association occurred between a then nearly 60-year old father and only child for 6 months during this national tragedy.

The action was commenced on September 15, 2003. Review of the docket evidences a State motion to dismiss on December 15, 2003. The claims include 4 for declaratory civil rights relief and 1 for compensatory relief against individual Respondents (joint action in defamation and violation of civil rights. The 2 district court judges initially assigned both were prior members of the NJ State judiciary – including as family court judge(s). Respectfully, a request for transfer to a judicial official "*entirely absent any/ all association with the State of New Jersey judiciary*" was reasonable and appropriate. *See Liteky v. United States*, 510 U.S. 540 (1994). Under the particular facts and circumstances of this dispute -- inhumane mistreatment of a minor child (and father) inexcusably for many years and relentless concealment of judicial misconduct likewise for many years – it is this Petitioner-father's conviction that it is inconceivable that a "... *disinterested lay observer fully informed of the facts underlying the grounds ...*"

could not but doubt any present or former State of New Jersey judicial official's "*impartiality*". *See generally Bolin v. Story*, 225 F. 3rd 1234, 1239 (11th Cir. 2000)

As the Circuit opinion places incorrect reliance upon *Rooker-Feldman*, the facts/ issues relating to Respondents' violations of Petitioner's civil rights remain unaddressed. More, (i) as it remains uncontested that Judge Rand was *absent jurisdiction* concerning the defamation and other grievances outlined and (ii) as it remains uncontested that Judge Rand was *absent jurisdiction* in the designation of Montgomery as "*parenting coordinator*" (as without legislative approval), the rulings below do not support absolute judicial immunity or the immunity identified in *Hughes v. Long*, 242 F. 3rd 121 (3rd Cir. 2001) ("*Hughes II*").

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted and the judgment below reversed.

DATED: New York, New York
September 11, 2007

Respectfully submitted,

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APPENDICES

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL J. O'CALLAGHAN,
Plaintiff,

v.

HON. PETER C. HARVEY, etc., *et al.*,
Defendants.

Civil Action
No. 03-4419
(JWB)

BISSELL, *Chief Judge*

This matter comes before the Court on the State of New Jersey Defendants' (Peter C. Harvey, Ariel Rodriguez and David B. Rand) motion to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b) (1) and 12(b) (6).[1] Plaintiff has filed a cross-motion requesting a preliminary hearing pursuant to Federal Rule of Civil Procedure 12(d) and seeking to strike certain defenses pursuant to Federal Rule of Civil Procedure 12(f).

BACKGROUND & PROCEDURAL HISTORY

On September 15, 2003, *Pro Se* Plaintiff Daniel J. O'Callaghan, Esq. filed the instant complaint in the United States District Court for the District of New Jersey alleging violations of 42 U.S.C. §§ 1983 and 1985. Plaintiff also seeks redress of various family court matters and alleges procedural errors and rule misapplications made by the judges involved in said matters. The allegations in the 2003 federal Complaint stem from earlier New Jersey state family court proceedings, a factual summary of which is detailed as follows.[2]

Plaintiff O'Callaghan is the natural father of DTB.[3] On

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[1] Defendant law firm Einhorn, Harris, Ascher, Barbarito, Frost & Ironson, P.C and Defendant Sharon Ryan Montgomery do not join in the instant motion to dismiss.

[2] The facts recited below were pulled from the instant Complaint and from the Opinions written in previously filed cases which Plaintiff O'Callaghan has brought in this District.

[3] At the time the instant Complaint was filed, DTB was 11 years of age. Compl. ¶ 10.

June 22, 2000 O'Callaghan filed suit pursuant to N.J. STAT. ANN. §§ 9:17-39, 40 against VRB, the natural mother of DTB, in New Jersey Superior Court, Chancery Division, Family Part, Morris County, for paternity, custody and/ or visitation of DTB. Following a hearing on August *25*, 2000, the Hon. John J. Harper, J.S.C. terminated all overnight visitation for plaintiff O'Callaghan with his son. In October 2000, Plaintiff O'Callaghan petitioned the New Jersey Appellate Division and the New Jerse_ Supreme Court upon discretionary interlocutory motions for leave to appeal. Among the relief sought was a request for federal constitutional relief. On December 4, 2000 and January 24, 2001, the Appellate Division and the New Jersey Supreme Court denied interlocutory relief.

In January 2001, Plaintiff O'Callaghan filed a complaint with the State Advisory Committee on Judicial Conduct. This complaint related to a December 8, 2000 proceeding in which Judge Harper allegedly engaged in abusive behavior. On February 6, 2001, Judge Harper issued an Order and Letter Decision dismissing Plaintiff O'Callaghan's Family Court complaint and directing sanctions against Plaintiff in the amount of $10,000.00. Judge Harper also ordered that the overnight visitation ban continue. The reason cited for this dismissal was "failure to follow the orders of the court and O'Callaghan's repeated efforts to frustrate and delay the fact-finding process."

On February 14, 2001, Plaintiff O'Callaghan, alleging a violation of constitutional safeguards, sought emergent relief from the New Jersey State Appellate Division. Two days later, his application for emergent relief was denied. Thereafter, on February 26, 2001, O'Callaghan petitioned the Appellate Division for leave to appeal to the New Jersey Supreme Court. On April 26, 2001, the Appellate Division, ruling that the February 6, 2001 Order and Letter Decision issued by Judge Harper was a final order which may be appealed pursuant to a notice of appeal, denied Plaintiff's motion for interlocutory relief. Subsequently, on April 25, 2001, Plaintiff O'Callaghan filed an application with the New Jersey Supreme Court for emergent and interlocutory relief. O'Callaghan argued that the Appellate Division had failed to review the substantive

merit of his claims and that further delay of this matter was harmful to his relationship with his son. Also, in April 2001, Plaintiff filed a motion in the New Jersey Appellate Division for leave to appeal the final order of Judge Harper.

On February 7, 2001, Plaintiff O'Callaghan filed a complaint in the United States District Court for the District of New Jersey alleging multiple civil rights violations. On April 16, 2001, O'Callaghan amended the complaint and detailed approximately seventeen allegations of judicial misconduct on the part of Judge Harper. Plaintiff sought a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Judge Harper and the then Attorney General John J. Farmer, Jr. violated Plaintiff's right of access to courts, right to privacy, Fourteenth Amendment Due Process/Equal Protection rights and right to a jury trial. Plaintiff O'Callaghan further requested the following relief, pursuant to 42 U.S.C. §§ 1983 and 1985(3): (1) a declaration of violation of 42 U.S.C. § 1983; (2) a declaration of violation of 42 U.S.C. § 1985(3); (3) a declaration of unconstitutionality of New Jersey Court Rule 5:8B (Appointment of Guardian Ad Litem); (4) a declaration of unconstitutionality of New Jersey Court Rule 5:1-4 (Case Management Track System); (5) a declaration of unconstitutionality of New Jersey Court Rule 5:3-3 (Appointment of Experts); (6) a declaration of unconstitutionality of New Jersey Court Rule 5:8-1, et seq., (Custody of Children); (7) a declaration of violation of DTB's and O'Callaghan's right of access to the courts; (8) a declaration of violation of DTB's and O'Callaghan's right of privacy; (9) a declaration of violation of DTB's and O'Callaghan's Fourteenth Amendment rights to due process of law and to equal protection of the laws; (10) a declaration of violation of O'Callaghan's right to a jury trial; (11) a declaration that there existed a plan and conspiracy, in violation of 42 U.S.C. § 1983; (12) a declaration that there has existed a plan and conspiracy, in violation of 42 U.S.C. § 1985(3); and (13) a grant of injunctive relief, pursuant to 42 U.S.C. § 1983, to the extent authorized by controlling law, and pursuant to 42 U.S.C. § 1985(3) upon the grounds identified therein.

Plaintiff O'Callaghan further requested injunctive relief due to the allegedly continuing irreparable injury. O'Callaghan requested the Court to (1) enjoin enforcement of all orders, findings,

decisions, and judgments issued in the Family Court case; (2) direct reinstatement of O'Callaghan's Family Court complaint; (3) direct a visitation rights hearing and custody trial in compliance with the State's "track system,"; (4) direct the transfer of the case to another Family Court judge; and (5) direct that all proceedings and the record in the Family Court case be made confidential.

In an August 9, 2001 opinion and Order, Judge Greenaway dismissed Plaintiff O'Callaghan's complaint because the Court lacked the subject matter jurisdiction to hear the case under the *Rooker-Feldman* doctrine.[4] The Court further concluded that "O'Callaghan's allegations against Defendants are 'inextricably intertwined' with the Family Court's decision" and that "O'Callaghan's Complaint is essentially an appeal of a state court decision." *See* August 9, 2001 order signed by the Hon. Joseph A. Greenaway, U.S.D.J. [5] On October 31, 2001, Judge Greenaway denied Plaintiff's motion for reconsideration of the August 9, 2001 order. *See* October 31, 2001 Order. Subsequently, on November 16, 2001, Judge Greenaway denied Plaintiff's motion for an order granting an interlocutory appeal of this matter. *See* November 16, 2001 order. In his motion seeking leave to file an interlocutory appeal, Plaintiff O'Callaghan also moved for consolidation of two actions that were pending before the Court at that time, Civil Action No. 01-630 and Civil Action No. 01-4032. The Court granted this motion and consolidated the two actions. *See* November 16, 2001 Order. In September 2003, Judge Greenaway issued an Order granting a motion for summary judgment which was filed by Mathias R. Hagovsky, one of the Defendants in the consolidated action. The Court determined that (1) it lacked subject matter jurisdiction consistent with the *Rooker-Feldman* doctrine; and (2) regardless of subject matter jurisdiction, Defendant Hagovsky is immune from liability, as a court appointed psychologist. *See* September 26, 2003 Order.

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[4] District of Columbia Court of Appeals v. Feldman, 450 U.S. 452 (1963); Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923).

[5] On December 17, 2001, Judge Greenaway issued an Amended Order which stated that the August 9, 2001 Order applied to Plaintiff O'Callaghan's Amended Complaint. *See* December 17, 2001, Order.

On January 10, 2002, Plaintiff O'Callaghan filed a Complaint on behalf of himself and DTB alleging civil rights violations. Plaintiff named as Defendants the Advisory Committee on Judicial Conduct to the Supreme Court of the State of New Jersey, David B. Rand, a Justice of the Superior Court of New Jersey, Chancery Division, Family Part, the Stepfamily Foundation, Inc. (the "Stepfamily Foundation") and Jeannette Lofas ("Lofas"), the President of the Stepfamily Foundation, Inc. The aforementioned Defendants moved to dismiss the complaint in its entirety and this motion was granted by Judge Greenaway on April 2, 2003. *See* April 2, 2003. On August 28, 2003 Judge Greenaway issued an Order of Consolidation which consolidated into one case, Civil Action Number 02-112 and 02-5791.

On September 15, 2003, Plaintiff Daniel O'Callaghan filed the complaint that is the subject of the instant motion (03-cv-4419). The Complaint alleges causes of action under 42 U.S.C. §§ 1983, 1985, 2201, 2202 and the common law. Plaintiff O'Callaghan named as defendants in this matter, New Jersey Attorney General Peter Harvey, New Jersey Appellate Division Judge Ariel Rodriguez, New Jersey Superior Court Judge David Rand, the law firm of Einhorn, Harris, Ascher, Barbarito, Frost & Ironson, P.C. and Sharon Ryan Montgomery. The First Count of the Complaint alleges that the State Defendants' "conduct and implementation of the rules, procedures, policies, practices, system as identified and/or such Opinions have violated [Plaintiff's] clearly established rights, viz., rights of access to courts and/or privacy, and/or Fourteenth Amendment guaranteed due process/equal protection rights and/or violated 42 U.S.C. § 1983 and/or § 1985(3)...." Compl., Count One, ¶ 197. Accordingly, Plaintiff requests that a declaratory judgment be issued declaring that "such rules, procedures, policies, practices, system and/or such Opinions is/are in violation of the Constitution of the United States." Id.

In Count Two of the Complaint Plaintiff requests that a declaratory judgment be issued which, *inter alia*, declares that the New Jersey State Appellate Division Opinions I and II violated 42 U.S.C. § 1983 and/or § 1985(3). Compl., Count Two, ¶ 200. Furthermore, Plaintiff petitions this Court to issue a declaratory judgment which declares that the New Jersey State Family Court

and Appellate Division policy and practice of "unfairly administer[ing] parent-child matters absent independent, objective standards [] and accountability..." violates 42 U.S.C. § 1983 and/or § 1985(3). *Id.* Plaintiff alleges the following in Count Three:

> Should Judge Rodriguez [Hon. Ariel A. Rodriguez] have violated Plaintiff *Pro Se*'s clearly established rights, viz., Fourteenth Amendment guaranteed due process/equal protection rights, and/or committed a violation of 42 U.S.C. § 1983 and/or § 1985(3) through validation and authorization for inhumane "exchanges" of the minor child DTB during the period September 11, 2001 -April, 2002, at (1/2) block) World Trade Center disaster site as identified in the facts and circumstances alleged, including that said injury shall recur, Plaintiff *Pro Se* request[s] that there be issued a declaratory judgment which determines Defendant Judge Rodriguez's violation of said Federal rights and Federal statutes. Compl., Count Three, ¶ 203.

Count Four of the Complaint alleges that the Hon. David B. Rand has violated Plaintiff's Fourteenth Amendment rights, his right of access to the court, right to privacy and has "committed a violation of 42 U.S.C. § 1983 and/or § 1985(3) and/or defamation." Compl., Count Four, ¶ 206. As such, Plaintiff seeks a declaratory judgment determining the same. Plaintiff also alleges that the State remedies are inadequate and therefore seeks injunctive relief. Compl., Count Five, ¶ 208. In Count Five of the Complaint, Plaintiff alleges that there is continuing irreparable injury and a lack of adequate remedy at law "enjoining the State Defendant Judge Rand from applying, implement[ing] and/or maintaining the above-identified orders dated November 21, 2002, December 27, 2002, January 15, 2003, and August 9, 2003, grounded upon absence of jurisdiction and unequal treatment in violation of the Constitution of the United States concerning Family Court cases, particularly which involve any child (or children) of unmarried parents and the father of such child/children." *Id.* ¶ 209.

Count Six of the Complaint focuses on the allegations waged against Defendants Einhorn, Harris, Ascher, Barbarito, Frost & Ironson, P.C. and Sharon Ryan Montgomery. Plaintiff claims

said Defendants "willfully have acted pursuant to a working relationship with Judge Rand and have conspired to violate [Plaintiff's] Federal rights and have conspired to commit defamation." Compl., Count Six, ¶ 212. Plaintiff claims that the Defendants acted in violation of 42 U.S.C. § 1983 and/or § 1985(3) and their actions and conduct have resulted in the following:

> (i) Judge Rand's injudicious threats for contempt and immediate incarceration and other acts of intimidation particularly as were evidenced at [the] November 21, 2002, January15, 2003, and July 30, 2003, proceedings ;
>
> ii) upon the absence of DTB's "immediate therapeutic counseling" so as to continue and maintain a wrongful severance/termination of parent-child relationship for more than three (3) years; and
>
> (iii) willful defamation and unjustified monetary sanctions at December 27, 2002, OSC and January 25, 2003, proceedings.

Compl., Count Six, § 215. Plaintiff seeks a declaratory judgment as well as compensatory and punitive damages with respect to the aforementioned violations. Compl., Count Six, ¶ 216; Count Seven, ¶ 219.

The instant Case was originally assigned to the Hon. Katharine S. Hayden, United States District Judge for the District of New Jersey. In a letter Opinion and Order dated January 21, 2004, Judge Hayden observed that there were "marked similarities between this lawsuit and one that is on the active docket of another district judge." *See* January 21, 2004 Letter Opinion and Order. Also, Judge Hayden granted Plaintiff's pending recusal application, "in the interests of preserving the important goals of the appearance of judicial impartiality and judicial economy." *Id.* Accordingly, on January 27, 2004, this matter was reassigned to Judge Greenaway. On July 27, 2004, this matter was again reassigned and is now on the docket of this Court. Presently before this Court is a motion to dismiss the complaint pursuant to Federal Rues of Civil Procedure 12(b) (1) and 12 (b) (6). This motion was filed by Defendants Peter C. Harvey, Attorney General of New Jersey, Ariel A. Rodriguez,

J.A.D., and David B. Rand, Chancery Division, Family Part (the "State Defendants").[6] Plaintiff has also filed a cross-motion for a preliminary hearing pursuant to Federal Rule of Civil Procedure 12 (d) and to strike certain defenses pursuant to Federal Rule of Civil Procedure 12 (f).

DISCUSSION

I. Motion to Dismiss

Standard for Motion to Dismiss
Pursuant to Fed. R. Civ. P. 12 (b) (1)

Fed. R. Civ. P. 12 (b) (1) raises the issue of the district court's subject matter jurisdiction. A motion to dismiss for lack of subject matter jurisdiction may be made at any time by a party or *sua sponte* by the Court. *Cospito v. Califano*, 89 F.R.D. 374, 379 (D.N.J 1981). In evaluating a 12 (b) (1) motion, the Court must first address "a crucial distinction, often overlooked," in determining whether the motion attacks the complaint on its face or on its facts. *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977); *Courtney v. Choplin*, 195 F. Supp. 2d 649, 650 (D.N.J. 2002). In the case of a facial challenge, the court must accept the allegations in the complaint as true,[7] and disposition of the motion becomes a purely legal question. *Courtney*, 195 F. Supp. 2d at 650 (citing *Mortensen*, 549 F.2d at 891). A Rule 12(b) (1) motion predicated on the legal insufficiency of a claim may be granted only if the claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or ... is wholly insubstantial and frivolous." *Bell v. Hood*, 327 U.S. 678, 682 (1946); *Kehr*

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[6]Counsel for the State Defendants also notes that the judges that are referred to in the Complaint, but not named in the caption, namely John T. Harper, J.S.C., Chancery Division Family Part, Deanne M. Wilson, J.S.C., Chancery Division Family Part, John B. Dangler, J.S.C., Chancery Division Family Part and Stephen Skillman, P.J.A.D. are entitled to the same defense and shall be included in the argument contained herein for purposes of completeness, and in an effort to avoid subsequent litigation. *See* Def. Br. at 1. However, the instant motion does not relate to those judges because such persons are not parties to the instant action.

[7]In this sense, a Rule 12(b) (1) motion is similar to a Rule 12 (b) (6) motion to dismiss. *See Mortensen*, 549 F.2d at 891.

Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-09 (3d Cir. 1991) (quoting *Bell*, 327 U.S. at 682)); *Saudi Basic Ind. Corp. v. Exxonmobil Corp.*, 194 F. Supp. 2d 378, 400 (D.N.J. 2002).

> On the other hand, if the motion disputes the existence of subject matter jurisdiction *in fact*, then "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist." *Mortensen*, 549 F.2d at 891; *Courtney*, 195 F. Supp. 2d at 650.

Standard of Law Applied to Motion to Dismiss Pursuant to Fed. R Civ. P. 12 b) (6)

A court "may dismiss a complaint pursuant to Fed. R. Civ. P. 12(b) (6) for failure to state a claim where it appears beyond doubt that no relief could be granted under any set of facts which could be proved consistent with the allegations. *In re Party City Sec. Litig.*, 147 F. Supp. 2d 282, 297 (D.N.J. 2001) (citing *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 811 (1993); *Semerenko v. Cendant Corp.*, 223 F.3d 165, 173 (3d Cir. 2001)). Granting a motion to dismiss under Fed. R. Civ. P. 12 (b) (6) can result in a dismissal at an early stage of a case; therefore, all allegations set forth by a plaintiff must be taken as true and all reasonable factual inferences must be drawn in his or her favor. *Id.* (citing *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 475 (1999); *Semerenko*, 223 F.3d at 173).

A complaint may not be dismissed unless it appears beyond doubt that "'the facts alleged in the complaint, even if true, fail to support the claim.'" *Id.* (quoting *In re Warfarin Sodium*, 214 F.3d 395, 397 (3d Cir. 2000)). Legal conclusions made in the guise of factual allegations, however, are given no presumption of truthfulness. *Id.*

A court reviewing the sufficiency of a complaint has a limited role. The issue is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to offer evidence to support the claims. *Id.* (citing *Langford v. City of Atlantic City*, 235

F.3d 845, 847 (3d Cir. 2000)). A court may properly refer, however, to the factual allegations contained in other documents, such as documents referred to in the complaint and matters of public record, if the claims of the plaintiff are based upon those documents. *Id.* (citing *In re Burlington Coat Factory*, 114 F.3d 1410, 1426 (3d Cir. 1997)). In other words, such documents must be "integral to or explicitly relied upon in the complaint." *Id.* (quoting *In re Burlington Coat Factory*, 114 F.3d at 1426).

II. The *Rooker-Feldman* Doctrine

"The fundamental principle of the *Rooker-Feldman* doctrine [is] that a federal district court may not sit as an appellate court to adjudicate appeals of state court proceedings." *See Walker v. Horn*, 385 F.3d 321, 329 (3d Cir. 2004) (quoting *Port Auth. Police Benevolent Assoc., Inc. v. Port Auth. Of N.Y. and N.J. Police Dept.*, 973 F.2d 169, 179 (3d Cir. 1992)). This doctrine arise from 28 U.S.C. § 1257 which states:

> Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

28 U.S.C. § 1257 specifically refers to orders and decrees of the highest state court, however, the *Rooker-Feldman* doctrine has also been applied to final decisions of lower state courts. *Walker*, at 329 (citing *Port. Auth. Police Benevolent Assoc.*, at 178). "To ensure that Congress's intent to prevent the lower federal courts from sitting in direct review of the decisions of a state tribunal is given effect, the *Rooker-Feldman* doctrine prohibits District Courts from adjudicating actions in which the relief requested requires determining whether the state court's decision is wrong or voiding the state court's ruling." *Walker*, at 329 (quoting *Desi's Pizza, Inc.*

v City of Wilkes-Barre, 321 F.3d 411, 419 (3d Cir. 2003)). A claim is barred by *Rooker-Feldman* under the following two circumstances: (1) the federal claim was "actually litigated" in state court prior to the filing of the federal action; or (2) the federal claim is "inextricably intertwined" with the state adjudication. *Walker*, at 329 (quoting *Desi's Pizza*, at 419). "A federal claim is 'inextricably intertwined' with an issue adjudicated by a state court when: (1) the federal court must determine that the state court judgment was erroneously entered in order to grant the requested relief, or (2) the federal court must take an action that would negate the state court's judgment." *Walker*, at 330 (citing *Desi's Pizza*, at 421).

In the case at bar, Plaintiff's Claims are based upon decisions made during state proceedings. Plaintiff petitions this Court to review his state court proceedings and to determine that the Superior Court Judges violated his constitutional rights. Counts One through Four of the Complaint clearly demonstrate that Plaintiff is attempting to appeal the State court decisions. The constitutional claims which Plaintiff now alleges are "inextricably intertwined" with the state court proceedings. *See Walker*, at 329-330. Moreover, Plaintiff seeks declaratory and injunctive relief and requests that this Court overturn the state court's decision. "*Rooker-Feldman* does not allow a plaintiff to seek relief that, if granted, would prevent a state court from enforcing its orders." *Walker*, at 330 (quoting *Desi's Pizza*, at 421). Plaintiff's attempts to characterize his claims as something other than a reargument of the state court rulings are overshadowed by the numerous allegations of the kind which saturate the Complaint. This Court determines that the relief which Plaintiff seeks with respect to the claims filed against the State Defendants is divested by *Rooker-Feldman*. Accordingly, this Court lacks subject matter jurisdiction to adjudicate those claims which attack the constitutionality of the state court proceedings.

III. Plaintiff's State Tort Law Claims

A. Plaintiff's State Law Claims are Not Barred by the New Jersey Tort Claims Act

The New Jersey Tort Claims Act "NJTCA") requires that a plaintiff serve notice of an intention to sue a public entity or public

employer within 90 days of accrual of the claim. *See* N.J.S.A. 59:8-8; *see also Caviglia v. Royal Tours of America*, 178 N.J. 460 (2004). "Failure to satisfy the notice requirement of the [NJTCA] is an absolute bar to recovery against a public entity or its employees." *Brennan v. Norton*, 350 F.3d 399, 431 (3d Cir. 2003). Recently, the New Jersey Supreme Court wrestled with the issue of whether the notice provisions in the NJTCA apply to causes of action based on intentional torts inflicted by a public employee. *See Velez v. City of Jersey City*, 180 N.J. 284 (2004). The Court held that the Legislature, in passing N.J.S.A 59:8-3 and 59:8-8, would have expressly excluded intentional torts from the notice requirements if it intended to do so. *Velez*, at 294. Therefore, recognizing that its "interpretation of the Act is consistent with prior cases in which courts have concluded that the Act's notice requirements apply to conduct that arguably could be classified as the intentional or outrageous conduct described in N.J.S.A. 59:3-14," the New Jersey Supreme Court held that notice of a claim for intentional torts is required by N.J.S.A. 59:8-8. *Velez*, at 294-295. However, after concluding that the issue was one of first impression before the New Jersey Supreme Court, the decision was "applied prospectively to all similar causes of action accruing after the date of [the] opinion." *Id.* at 297. The *Velez* Opinion was issued on June 29, 2004.

> Although *Velez* is relevant to the issue in the instant case, it was not applied retroactively. Thus, because the instant Complaint in the case at bar was filed prior to June 29, 2004, the New Jersey Supreme Court's holding in *Velez* is not binding. *See Ptaszynski & Ptaszynski v. Uwaneme*, 371 N.J. Super. 333 (App. Div. 2004) (the notice of claim requirements of the NJTCA did not apply because plaintiffs' causes of action accrued on July 16, 1999).

B. Plaintiff's Defamation Claim

The only state Defendant to which Plaintiff alleges a defamation claim is the Hon. David B. Rand; however, other than the bald allegations contained in Count Four of the Complaint, Plaintiff alleges no facts to support this claim. *See* Count Four, ¶ 206. Accordingly, Plaintiff's state law defamation claim as it applies to Judge Rand is dismissed.

IV. Plaintiff's Motions Pursuant to Federal Rules of Civil Procedure 12 (d) and 12 (f)

Federal Rule of Civil Procedure 12 (d) states:

> **Preliminary Hearings.** The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

Federal Rule of Civil Procedure 12 (f) states:

> **Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at of any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

"Motions to strike under Rule 12 (f) are not favored by the courts and they are infrequently granted. Any doubt as to the striking of matter in a pleading should be resolved in favor of leaving the pleading unstricken." *In re O.P.M. Leasing Svcs., Inc.*, 35 B.R. 854, 863-64 (Bkrtcy, S.D.N.Y. 1983) (rev'd on other grounds). In order to justify an order to strike a matter from a pleading, courts have required the moving party to demonstrate prejudice. *See U.S. v. Viola*, 2003 WL 21545108, *3 (E.D. Pa. July 7, 2003) (citing *Miller v. Group Voyagers, Inc.*, 912 F. Supp. 164, 168 (E.D. Pa. 1996); *North Penn Transfer, Inc. v. Victaulic Co. of America*, 859 F. Supp. 154, 158 (E.D. Pa. 1994); *Great West Life Assur. Co. v. Levithan*, 834 F. Supp. 858, 864 (E.D. Pa., 1993)). In support of his motion to strike certain defenses raised by Defendants Einhorn, Harris, Ascher, Barbarito, Frost & Ironson, P.C. and Sharon Ryan Montgomery, Plaintiff argues the invalidity of the defenses but does not even attempt to demonstrate a showing of prejudice. Moreover, defendant Montgomery's Answer with

Separate Defenses was filed on October 23, 2003, and that of defendant Einhorn, Harris, etc., on November 3, 2003. Plaintiff's cross-motion under Rule 12 (f) was filed on December 29, 2003, well beyond the 20-day time period enunciated in Rule 12 (f).[8] Accordingly, Plaintiff's motion to strike pursuant to Federal Rule of Civil Procedure 12 (f) is denied. Furthermore, aside from including a rather brief paragraph in his opposition papers explaining the purpose of 12 (d) preliminary hearings, Plaintiff does not alert the Court as to the issues to be addressed at such a hearing. Rather, Plaintiff presents a cursory review of Rule 12 (d) which fails to offer to this Court any proof or evidence as to why Rule 12 (d) application is necessary in the instant case. Accordingly, this motion is also denied.

CONCLUSION

For the foregoing reasons, this Court grants the State Defendants' motion to dismiss as it relates to Counts One through Five of the Complaint. Plaintiff's cross-motions pursuant to Federal Rules of Civil Procedure 12 (d) and 12 (f) are denied.

S/ John W. Bissell
JOHN W. BISSELL
Chief Judge
United States District Court

DATED: March 10, 2005

[8] While the Court could initiate a Rule 12 (f) motion "at any time," it has not and will not in the case at bar.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL J. O'CALLAGHAN,
Plaintiff,

Civil Action No.
03-4419 (JWB)

ORDER

HON. PETER C. HARVEY, etc., *et al.*,
Defendants.

In the wake of this Court's Opinion and Order dated March 10, 2005, the plaintiff has filed three motions: (1.) recusal of the undersigned as the trial judge; (2.) reconsideration of the Motions adjudicated on March 10, 2005, and (3.) certification of the Court's interlocutory decisions on that date for immediate appeal to the United States Court of Appeals for the Third Circuit under 29 U.S.C. § 1292(b). For the reasons well stated in the Letter-Opinion and Order of the Honorable Katharine S. Hayden of this Court, a copy of which is annexed hereto, the motion for recusal is DENIED. The motion for § 1292(b) certification is also DENIED because the criteria of that statute are not met at this time in the case at bar. However, the motion for reconsideration is GRANTED in part solely on the question of the impact (if any) of the U.S. Supreme Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S.__, 125 S. Ct. 1517 (2005), upon this Court's decision of March 10, 2005, in light of the latter's substantial reliance upon the *Rooker- Feldman* doctrine in granting the State Defendants' motion to dismiss. As to any other ground asserted in the motion for reconsideration, that motion is DENIED. Upon entry of this Order, and in light of the undersigned's impending retirement effective September 1, 2005, the Clerk of this court shall reassign this action to another District Judge in this Court who shall schedule further proceedings on the motion for reconsideration as that Judge finds to be appropriate. Unless and until the newly-assigned Judge orders otherwise, this Court's Opinion and Order of March 10, 2005 remain in full force and effect.

/s/ John W. Bissell
JOHN W. BISSELL Chief Judge
United States District Court

DATED: August 30, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL J. O'CALLAGHAN — Civ. No. 03-4419(FSH)

Plaintiff,

v.

HON. PETER C. HARVEY, etc., *et al.*, — ORDER
March 22, 2006

Defendants.

This matter having come before the Court upon the Court's August 30, 2005, Order granting reconsideration of the motions adjudicated on March 10, 2005 solely on the question of the impact, if any, of the United States Supreme Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*. 544 US. 280, 125 S. Ct. 1517 (2005), which limited the *Rooker-Feldman* doctrine to the class of cases from which it acquired its name, *i.e.*, those cases brought in federal court to complain of injuries caused by state court judgments rendered before the federal action commenced; and the Court having considered the impact of the Supreme Court's decision in *Exxon Mobil* on this Court's March 10, 2005 Opinion and Order; and the Court finding that because the instant case was brought by a "state-court loser[] complaining of injuries caused by [a] state-court judgment[] rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments," 544 U.S. __, 125 S. Ct. at 1522-23, it is the kind of case from which the *Rooker-Feldman* doctrine got its name; and the Court therefore finding that Counts One through Five of Plaintiff's Complaint were properly dismissed; and this Court further finding that despite the fact that not all Defendants moved for dismissal of Plaintiff's Complaint, this Court determines *sua sponte* that it cannot assert subject matter jurisdiction over this matter and that Count Six of Plaintiff's Complaint should also be dismissed.[9]

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[9] Count Six of the Complaint, like the other five counts, attempts to re-litigate family court issues previously raised and litigated both in state and federal court. Plaintiff has attempted on numerous occasions to litigate or appeal the same final state court judgments in federal court. *see* Civil Action Nos. 01-630(JAP), 01-

IT IS on this 22nd day of March, 2006,

ORDERED that because this Court lacks subject matter jurisdiction over this action based on the *Rooker-Feldman* doctrine, Counts One to Five of the Complaint was properly dismissed; and it is further

ORDERED that Count Six of the Complaint is also dismissed for lack of subject matter jurisdiction; and it is further

ORDERED that the Clerk of the Court shall CLOSE this case.

/s/ Faith S. Hochberg
Hon. Faith S. Hochberg,
U.S.D.J.

4032(JAG), 02-112(JAG), 05-2680(JAP), 05-4309(KSH).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-2645

DANIEL J. O'CALLAGHAN,
Appellant

v.

HON. PETER C. HARVEY, etc., *et al.*,
Appellees

On Appeal From the United States District Court
For the District of New Jersey
(DC. Civ. No. 03-cv-04419)

District Judge: Honorable Faith S. Hochberg
Submitted Under Third Circuit LAR 34.1(a)

May 11, 2007

Before: FISHER, ALDISERT AND WEIS, CIRCUIT JUDGES

(Filed May 17, 2007)

OPINION, PER CURIAM

Daniel J. O'Callaghan, an attorney appearing *pro se*, appeals nearly every order entered by the United States District Court for the District of New Jersey in the underlying case. Appeals from many of these orders are clearly frivolous.[10] The primary

[10] Four different District Court Judges have presided over this case, and appellant challenges six orders related to that issue: the order of January 21, 2004, granting appellant's motion for recusal of the initial District Court Judge; the order of January 27, 2004, reassigning the case; the order of July 27, 2004, again reassigning the case; the order of August 30, 2005, denying appellant's request for recusal; the order of September 13, 2005, again reassigning the case due to the retirement of the assigned Judge; and the order of February 8, 2006, denying appellant's request to assign yet another Judge to the case. Appellant was clearly engaged in an impermissible attempt to judge shop in the District Court, and we reject his appeals of these orders. *Cf. Azubuko v. Royal* 443 F.3d 302, 303 (3d Cir. 2006); *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 162 (3d Cir.1993). We also reject the appeal of the order of November 14, 2003, granting defendants a brief extension of time within which to respond to the complaint as this clearly did not involve abuse of the District Court's discretion under Fed. R. Civ. P 6(b).

thrust of O'Callaghan's appeal, however, appears to be that his complaint should not have been dismissed under Fed. R. Civ. P. 12(b).[11]

O'Callaghan filed his complaint in the District Court on September 15, 2003, after the New Jersey state courts had denied him parental visitation rights with D.T.B., a minor child with whom he had cohabitated for a number of years.[12] As explained in detail in the District Court's order of March 10, 2005, this complaint alleged defamation and various constitutional violations against two New Jersey state judges, the New Jersey Attorney General, the law firm representing D.T.B.'s mother, and a court appointed "parenting coordinator" based on their involvement in the custody dispute.[13] The District Court dismissed the constitutional claims against the state court judges and the Attorney General for lack of jurisdiction based on *Rooker-Feldman* doctrine, and the defamation claims under Fed. R. Civ. P. 12(b)(6). *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Exxon Mobil Corp., v. Saudi Basic Indus. Corp.*, 544 U.S. 250 (2005).

We exercise jurisdiction pursuant to 28 U.S.C. § 1291, engaging in plenary review over decisions to dismiss for lack of subject matter jurisdiction and for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *See Marran v. Marran*, 376 F.3d 143, 149 (3d. Cir. 2004); *AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d *525, 529*

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[11] Consistent with the somewhat convoluted history of this case, appellant challenges four separate orders that ultimately resulted in the termination of his case below: the order of March 10, 2005, dismissing his complaint; the order of August 30, 2005, granting in part appellant's request for reconsideration; the order of March 22, 2006, reaffirming the dismissal of the complaint; and the order of April 13, 2006, denying appellant's request for reconsideration of the March 22 order.

[12] The procedural history of the state court proceedings is discussed in some detail in the District Court's order of March 10, 2005, and will not be repeated here.

[13] O'Callaghan brought similar claims against other parties involved in the state court proceedings. D.N.J. Civ. No. 01-cv-00630. This case was dismissed in part based on *Rooker-Feldman* doctrine and in part based on one defendant's absolute immunity. We affirmed the District Court on September 14, 2004. CA. No. 03-4259.

(3d Cir. 2006). We review the District. Court's denial of reconsideration for abuse of discretion. *See Alston v. Parker*, 363 F.3d 229, 233 (3d Cir. 2004).

Contrary to Appellant's repeated assertions, the Supreme Court's recent opinion in *Exxon Mobil Corp.* did not abolish the *Rooker-Feldman* doctrine. Rather, the Court explained that the doctrine remains applicable to suits in which "the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." *Exxon Mobil Corp.*, 544 U.S. at 291.

We agree with the District Court's conclusions that appellant's claims lie squarely within *Rooker-Feldman* doctrine. Appellant initiated this action in the United States District Court after the state courts had made final determinations regarding the custody of D.T.B. Appellant was a party to those state court actions. Appellant's concerns about the constitutionality of the state court orders and the procedures employed in those state court actions are properly the subject for direct appeal. They may not be brought through collateral attack of the sort mounted in O'Callaghan's federal court action, which explicitly invites the District Court to review and reverse an unfavorable state court judgment. *See Exxon Mobil Corp.*, 544 U.S. at 253-84. To the extent that appellant's defamation claims against state court judges or the court-appointed parenting coordinator may not be barred by *Rooker-Feldman*, they were properly dismissed based on judicial immunity. *See Hughes v. Long*, 242 F.3d 121,127 (3d Cir. 2001).

We find no abuse of discretion in the District Court's denial of Parker's [*sic*] motion for reconsideration, which identified neither errors in the District Court's order nor any other basis to justify revisiting that order.

Accordingly, we will affirm the order of the District Court.[14]

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[14] Appellees' motion for leave to file supplemental appendix is granted, and the cross-motion of Appellant to strike Appellees' brief and supplemental appendix is denied.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-2645

DANIEL J. O'CALLAGHAN,

Appellant

v.

HON. PETER C. HARVEY, etc., *et al.*,

Appellees

On Appeal From the United States District Court
For the District ofNew Jersey
(D.C Civ. No. 03-cv-4419)

District Judge: Honorable Faith S. Hochberg
Submitted Under Third Circuit LAR 34.1(a)
May11, 2007

Before: FISHER, ALDISERT AND WEIS, CIRCUIT JUDGES.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania [*sic*] and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered March 23, 2006, be and the same is hereby affirmed. Costs taxed against the Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
/s/ Marcia M Waidron
Clerk

DATED: May 17, 2007

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-2645

DANIEL J. O'CALLAGIHAN
Appellant

v.

HON. PETER C. HARVEY, etc., *et al.*,

District of New Jersey Civil No. 03-cv-04419

Before: SCIRICA, *Chief Judge*, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, ALDISERT* and WEIS*, *Circuit Judges.*

ORDER SUR PETITION FOR PANEL REHEARING AND REHEARING EN BANC

The petition for rehearing filed by Appellant having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing is hereby **DENIED**.

BY THE COURT:
/s/ Ruggero J. Aldisert, *Circuit Judge*

Dated: June 19, 2007
par/cc: DJO'C, Esq.
M.R.A., Esq.
H.P.F., Esq.
M.S.,Esq.

*Vote limited to panel rehearing only.